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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL,

Plaintiff,

-against-

DONALD J. TRUMP, in his personal
capacity,

Defendant.

NOTICE OF REMOVAL

from the Supreme Court of the State of New
York, County of New York, Index No.
160694/2019

The United States, by and through its undersigned attorneys, hereby removes the above-captioned action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 2679(d)(2), and respectfully gives notice as follows:

1. Donald J. Trump, President, is the named defendant in an action filed in the Supreme Court of the State of New York, County of New York, Index No. 160694/2019. A copy of the complaint in that action is attached hereto as Exhibit A.

2. This Notice of Removal is supported by 28 U.S.C. § 2679(d)(2).

3. The Federal Tort Claims Act (“FTCA”), as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (the “Westfall Act”), codified in relevant part at 28 U.S.C. § 2679, provides that suit against the United States shall be the exclusive remedy for claims for damages for the negligent or wrongful act or omission of an employee of the government occurring within the scope of his office or employment. 28 U.S.C. § 2679(b)(1).

4. Section 2679 (d)(2) states that “[u]pon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending.”

5. The Attorney General delegated his authority to issue such a certification to the Director of the Torts Branch. 28 C.F.R. § 15.4.

6. James G. Touhey, Jr., the Director of the Torts Branch within the Civil Division of the Department of Justice, certified that the defendant employee, President Trump, was acting within the scope of his office or employment at the time of the incident out of which the claim arose. The claim asserts defamation based on a written statement issued to the press and two statements the President made in interviews in June 2019 in which the President vehemently denied accusations made in Plaintiff’s then-forthcoming book. The President explained that these accusations were false and that the incident she alleged never happened. Acting pursuant to 28 C.F.R. § 15.4(a), the Attorney General’s delegate certified that President Trump was acting within the scope of his office as President of the United States when he publicly denied as false the allegations made by Plaintiff. A copy of this certification is attached as Exhibit B.

7. Because President Trump was acting within the scope of his office or employment at the time of the incident out of which the plaintiff's claim arose, the United States will file a motion to substitute itself for President Trump in this action for any claim for which the FTCA provides the exclusive remedy. 28 U.S.C. § 2679(b)(1), (d)(2).

8. Pursuant to 28 U.S.C. § 1446, written notice of this Notice of Removal is being provided to plaintiff, and a copy is being filed with the Supreme Court of the State of New York.

9. The state court docket index is attached hereto as Exhibit C.

10. In accordance with 28 U.S.C. § 1446(a) a copy of all process, pleadings, and orders included on the state court docket (less exhibits thereto)¹ is attached hereto as Exhibit D.

11. All affirmative defenses are reserved until such time as a responsive pleading is due from the United States in this action.

WHEREFORE, pursuant to 28 U.S.C. § 2679(d)(2), the aforesaid action is removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: September 8, 2020.

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¹ Due to the file size of several exhibits to motions, oppositions, replies, and letter briefs filed in the state court action, the United States will separately lodge the entire record.

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